

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:LM:MCT:CIN:1:TL-N-1829-01  
JEKagy

date:

to: Charles Landry (RFP Team Manager)  
Attn: James Hunter

from: RICHARD E. TROGOLO  
Associate Area Counsel  
(Large and Mid-Size Business)

subject: [REDACTED]

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**Grouping Rules for Foreign Sales Corporation Transfer Pricing**

This memorandum responds to your request of March 19, 2001 for an interpretation of the recently enacted final regulations on grouping rules for foreign sales corporations (FSC) transfer pricing. This memorandum should not be cited as precedent.

**ISSUE:**

Whether Treas. Reg. § 1.925(c)(8) allows a grouping redetermination to be made after the expiration (including extensions) of the statute of limitations for making claims for refund.

**CONCLUSION:**

Treas. Reg. § 1.925(c)(8) does not permit a grouping redetermination to be made after the expiration (including extensions) of the statute of limitations for making claims for refund.

**FACTS:**

[REDACTED] is a [REDACTED] corporation headquartered in [REDACTED], Ohio. Currently under examination are [REDACTED]'s consolidated federal income tax returns for the [REDACTED] and [REDACTED] taxable periods. As with most domestic corporations doing business abroad, [REDACTED] utilized numerous foreign sales corporations (FSC).

Generally speaking, section 927(d)(2)(B) permits FSCs to elect (on an annual basis) to apply the section 925 FSC transfer pricing provisions based on product lines, recognized industry or

trade usage. While the rules for judging the timeliness of the requests differ by year, the regulations provide for grouping redeterminations. In that regard, the final regulations provide the following:

For any taxable year beginning before January 1, 2000, a grouping redetermination may be made no later than the due date of the FSC's timely filed (including extensions) U.S. income tax return for the FSC's first taxable year beginning on or after January 1, 2000.

Treas. Reg. § 1.925(c)(8).

It has been suggested to the international examiner that Treas. Reg. § 1.925(c)(8) permits a grouping redetermination to be made for any taxable period beginning before January 1, 2000, regardless of whether the statute of limitations for making claims for refund for that period has expired. At issue here is the legitimacy of the taxpayer's suggested position regarding the application of Treas. Reg. § 1.925(c)(8).

#### ANALYSIS:

While the taxpayer's suggested position has some initial appeal based upon the language quoted above, the position cannot withstand any legitimate scrutiny. On a purely practical basis, if the statute of limitations for a year for which a grouping redetermination is sought has already expired, the Service would be precluded by statute from making any assessments or refunds for the barred year. In other words, even if the request for redetermination could be made, the redetermination would be meaningless.

On a more technical basis, the taxpayer's suggested position is premised on an incomplete reading of the final regulations. A more complete reading of the regulations establishes that the taxpayer's position is in error. In addition to the language quoted above by the taxpayer, Treas. Reg. § 1.925(c)(8) also contains the following:

In addition, any grouping redeterminations made under this paragraph must meet the requirements under §1.925(a)-1T(e)(4) with respect to redeterminations other than grouping.

In other words, in order to be a valid request for a grouping redetermination, the taxpayer's request must meet the additional requirements of Treas. Reg. § 1.925(a)-1T(e)(4). That regulation states, in part, as follows:

In addition, a redetermination may be made by the FSC and related supplier if their taxable years are still open under the statute of limitations for making claims for refund under section 6511 if they determine that a different transfer pricing method or grouping of transactions may be more beneficial.

Treas. Reg. § 1.925(a)-1T(e)(4) (emphasis supplied).

Because a request for a grouping redetermination must satisfy the requirements of Treas. Reg. § 1.925(a)-1T(e)(4), in order for a request to be valid, the statute of limitations for making claims for refund for the period sought must still be open.

Based upon Treas. Reg. § 1.925(a)-1T(e)(4), we believe that the taxpayer's suggested position that Treas. Reg. § 1.925(c)(8) permits a grouping redetermination to be made for any taxable period beginning before January 1, 2000, regardless of whether the statute of limitations for making claims for refund has expired, cannot be sustained.

We hope the foregoing fully disposes of the issues raised in your request of March 19, 2001. However, if additional questions remain, please contact the undersigned at (513) 684-3211, at your convenience.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

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